

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
MACON DIVISION

GLENN EDWARD SMITH,

Plaintiff,

vs.

BILL MASSEE, *et al.*,

Defendants.

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5:06-CV-21(DF)

**ORDER**

This Court hereby adopts and incorporates the Report and Recommendation (doc. 43) that United States Magistrate Judge Claude W. Hicks, Jr. entered in this case on September 12, 2006. In his Report, Magistrate Judge Hicks recommended the denial of Plaintiff's Motion for Voluntary Dismissal (doc. 40), finding that Defendants would be prejudiced by a dismissal without prejudice at this stage of the proceedings.

Federal Rule of Civil Procedure 41(a) permits a plaintiff to voluntarily dismiss an action only "upon order of the court and upon such terms and conditions as the court deems proper" after the defendant has filed an answer to the complaint, unless there is a stipulation signed by all parties to the action. Fed. R. Civ. P. 41(a). "A voluntary dismissal without prejudice is not a matter of right." *Fisher v. P.R. Marine Mgmt., Inc.*, 940 F.2d 1502, 1502 (11th Cir. 1991).

Here, Defendant Bill Massee objects to a dismissal without prejudice, arguing that such a dismissal at this stage of the litigation would be prejudicial because he "has been put to the

trouble and expense of defending this substantially frivolous case through discovery, and has filed a Motion for Summary Judgment.” (Def.’s Resp. Pl.’s Mot. Volun. Dismissal., doc. 41, at 1.) The Court agrees — granting Plaintiff’s motion at this stage of the proceedings would be prejudicial to Defendants, given the time and resources they have already expended litigating this case through discovery and filing motions for summary judgment. *See Stephens v. Ga. Dep’t of Transp.*, 134 Fed. Appx. 320, 323 (11th Cir. 2005) (affirming district court’s denial of plaintiff’s motion to dismiss her complaint voluntarily without prejudice where “numerous motions had been filed, extensive discovery had been produced, and motions for summary judgment were pending”).

The Court has reviewed and carefully considered Plaintiff’s Objections (doc. 44) to the Magistrate Judge’s Recommendation, but concludes that these objections do not warrant rejection or modification of the Magistrate Judge’s findings. Accordingly, Plaintiff’s Motion for Voluntary Dismissal (doc. 40) is hereby **DENIED**.

SO ORDERED, this 29th day of November, 2006.

/s/ Duross Fitzpatrick  
DUROSS FITZPATRICK, JUDGE  
UNITED STATES DISTRICT COURT

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